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HOUSE BILL 575

46TH LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2004

INTRODUCED BY

Max Coll

AN ACT

RELATING TO THE NEW MEXICO FINANCE AUTHORITY; MAKING THE  
AUTHORITY A STATE AGENCY AND ITS FUNDS STATE TREASURY FUNDS.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. Section 6-21-2 NMSA 1978 (being Laws 1992,  
Chapter 61, Section 2, as amended) is amended to read:

"6-21-2. LEGISLATIVE FINDINGS--DECLARATION OF  
PURPOSE. --

A. The legislature finds that:

(1) there are necessary state and local  
capital improvement and infrastructure needs that cannot be met  
with existing capital financing methods and funding sources;

(2) there is no coordinating entity or process  
for accomplishing long-term state and local capital planning,  
needs assessment or inventory of needs; setting priorities; and

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1 making more effective use of existing capital financing methods  
2 and funding sources;

3 (3) the uncertain nature of revenues available  
4 from the proceeds of severance tax bonds and other state and  
5 local revenues [~~have~~] has frustrated state and local government  
6 efforts to finance needed state and local capital projects; and

7 (4) in order to meet public capital and  
8 infrastructure needs, a central state mechanism to coordinate  
9 the planning and financing of public projects is necessary.

10 B. It is the purpose of the New Mexico Finance  
11 Authority Act to create a [~~governmental instrumentality~~] state  
12 agency to coordinate the planning and financing of state and  
13 local public projects, to provide for long-term planning and  
14 assessment of state and local capital needs and to improve  
15 cooperation among the executive and legislative branches of  
16 state government and local governments in financing public  
17 projects.

18 C. It is the further purpose of the New Mexico  
19 Finance Authority Act to provide financing for public projects  
20 in a manner that will not impair the capacity of the public  
21 project revolving fund to provide future financing to qualified  
22 entities for public projects. Funding shall not be provided  
23 from the public project revolving fund unless revenues in an  
24 amount sufficient to avoid a negative impact on the financing  
25 capacity of the public project revolving fund are

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1 contemporaneously pledged or dedicated for deposit to the  
2 public project revolving fund. Pursuant to Section 6-21-6.1  
3 NMSA 1978, the authority may provide funding from the public  
4 project revolving fund for the purposes of the Wastewater  
5 Facility Construction Loan Act, the Rural Infrastructure Act,  
6 the Solid Waste Act or the Drinking Water State Revolving Loan  
7 Fund Act. "

8 Section 2. Section 6-21-4 NMSA 1978 (being Laws 1992,  
9 Chapter 61, Section 4, as amended) is amended to read:

10 "6-21-4. NEW MEXICO FINANCE AUTHORITY CREATED--  
11 MEMBERSHIP-- QUALIFICATIONS-- QUORUM-- MEETINGS-- COMPENSATION--  
12 BOND. --

13 A. [~~There is created a public body politic and~~  
14 ~~corporate, separate and apart from the state, constituting a~~  
15 ~~governmental instrumentality to be known as]~~ The "New Mexico  
16 finance authority" is created as an adjunct state agency for  
17 the performance of essential public functions.

18 B. The authority shall be composed of twelve  
19 members. The state investment officer, the secretary of  
20 finance and administration, the secretary of economic  
21 development, the secretary of energy, minerals and natural  
22 resources, the secretary of environment, the executive director  
23 of the New Mexico municipal league and the executive director  
24 of the New Mexico association of counties or their designees  
25 shall be ex-officio members of the authority with voting

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1 privileges. The governor, with the advice and consent of the  
2 senate, shall appoint to the authority the chief financial  
3 officer of a state higher educational institution and four  
4 members who are residents of the state. The appointed members  
5 shall serve at the pleasure of the governor.

6 C. The appointed members of the authority shall be  
7 appointed to four-year terms. The initial members shall be  
8 appointed to staggered terms of four years or less, so that the  
9 term of at least one member expires on January 1 of each year.  
10 Vacancies shall be filled by appointment by the governor for  
11 the remainder of the unexpired term. Any member of the  
12 authority shall be eligible for reappointment.

13 D. Each appointed member before entering upon his  
14 duty shall take an oath of office to administer the duties of  
15 his office faithfully and impartially. A record of the oath  
16 shall be filed in the office of the secretary of state.

17 E. The governor shall designate an appointed member  
18 of the authority to serve as chairman. The authority shall  
19 elect annually one of its members to serve as vice chairman.  
20 The authority shall appoint and prescribe the duties of such  
21 other officers, who need not be members, as the authority deems  
22 necessary or advisable, including an executive director and a  
23 secretary, who may be the same person. The authority may  
24 delegate to one or more of its members, officers, employees or  
25 agents such powers and duties as it may deem proper and

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1 consistent with the New Mexico Finance Authority Act.

2 F. The executive director of the authority shall  
3 direct the affairs and business of the authority, subject to  
4 the policies, control and direction of the authority. The  
5 secretary of the authority shall keep a record of the  
6 proceedings of the authority and shall be custodian of all  
7 books, documents and papers filed with the authority, the  
8 minute book or journal of the authority and its official seal.  
9 The secretary shall make copies of all minutes and other  
10 records and documents of the authority and give certificates  
11 under the official seal of the authority to the effect that the  
12 copies are true copies, and all persons dealing with the  
13 authority may rely upon the certificates.

14 G. Meetings of the authority shall be held at the  
15 call of the chairman or whenever three members shall so request  
16 in writing. A majority of members then serving constitutes a  
17 quorum for the transaction of any business. The affirmative  
18 vote of at least a majority of a quorum present shall be  
19 necessary for any action to be taken by the authority. An ex-  
20 officio member may designate in writing another person to  
21 attend meetings of the authority and to the same extent and  
22 with the same effect act in his stead. No vacancy in the  
23 membership of the authority shall impair the right of a quorum  
24 to exercise all rights and perform all duties of the authority.

25 H. Each member of the authority shall give bond as

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1 provided in the Surety Bond Act. All costs of the surety bonds  
2 shall be borne by the authority.

3 I. ~~[The authority is not created or organized, and~~  
4 ~~its operations shall not be conducted, for the purpose of~~  
5 ~~making a profit. No part of the revenues or assets of the~~  
6 ~~authority shall benefit or be distributable to its members,~~  
7 ~~officers or other private persons.]~~ The members of the  
8 authority shall receive no compensation for their services, but  
9 shall be reimbursed for actual and necessary expenses at the  
10 same rate and on the same basis as provided for other public  
11 officers in the Per Diem and Mileage Act.

12 ~~[J. The authority shall not be subject to the~~  
13 ~~supervision or control of any other board, bureau, department~~  
14 ~~or agency of the state except as specifically provided in the~~  
15 ~~New Mexico Finance Authority Act. No use of the terms "state~~  
16 ~~agency" or "instrumentality" in any other law of the state~~  
17 ~~shall be deemed to refer to the authority unless the authority~~  
18 ~~is specifically referred to in the law.~~

19 ~~K. The authority is a governmental instrumentality~~  
20 ~~for purposes of the Tort Claims Act.]"~~

21 Section 3. Section 6-21-5 NMSA 1978 (being Laws 1992,  
22 Chapter 61, Section 5, as amended) is amended to read:

23 "6-21-5. POWERS OF THE AUTHORITY. -- The authority is  
24 granted all powers necessary and appropriate to carry out and  
25 effectuate its public and corporate purposes, including the

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1 following powers:

2 A. to sue or be sued;

3 B. to adopt and alter an official seal;

4 ~~[C. to make and alter bylaws for its organization~~  
5 ~~and internal management and to adopt, subject to the review and~~  
6 ~~approval of the New Mexico finance authority oversight~~  
7 ~~committee, such rules as are necessary and appropriate to~~  
8 ~~implement the provisions of the New Mexico Finance Authority~~  
9 ~~Act;~~

10 ~~D. to appoint officers, agents and employees,~~  
11 ~~prescribe their duties and qualifications and fix their~~  
12 ~~compensation;~~

13 E.] C. to make, enter into and enforce all  
14 contracts, agreements and other instruments necessary,  
15 convenient or desirable in the exercise of the authority's  
16 powers and functions and for the purposes of the New Mexico  
17 Finance Authority Act;

18 ~~[F.] D. to the extent allowed by law, to acquire,~~  
19 ~~construct, hold, improve, grant mortgages of, accept mortgages~~  
20 ~~of, sell, lease, convey or dispose of real and personal~~  
21 ~~property for its public purposes;~~

22 ~~[G.] E. to acquire, construct or improve real~~  
23 ~~property, buildings and facilities for lease and to pledge~~  
24 ~~rentals and other income received from such leases to the~~  
25 ~~payment of bonds;~~

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1           ~~[H.]~~ F. to make loans, leases and purchase  
2 securities and contract to make loans, leases and purchase  
3 securities;

4           ~~[I.]~~ G. to make grants to qualified entities to  
5 finance public projects; provided that such grants are not made  
6 from the public project revolving fund;

7           ~~[J.]~~ H. to procure insurance to secure payment on  
8 any loan, lease or purchase payments owed to the authority by a  
9 qualified entity in such amounts and from such insurers,  
10 including the federal government, as it may deem necessary or  
11 desirable and to pay any premiums for such insurance;

12           ~~[K.]~~ I. to fix, revise from time to time, charge  
13 and collect fees and other charges in connection with the  
14 making of loans, leases and any other services rendered by the  
15 authority;

16           ~~[L.]~~ J. to accept, administer, hold and use all  
17 funds made available to the authority from any sources;

18           ~~[M.]~~ K. to borrow money and to issue bonds and  
19 provide for the rights of the holders of the bonds;

20           ~~[N.]~~ L. to establish and maintain reserve and  
21 sinking fund accounts to insure against and have funds  
22 available for maintenance of other debt service accounts;

23           ~~[O.]~~ M. to invest and reinvest its funds and to  
24 take and hold property as security for the investment of such  
25 funds as provided in the New Mexico Finance Authority Act;

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1                   ~~[P. to employ attorneys, accountants, underwriters,~~  
2 ~~financial advisers, trustees, paying agents, architects,~~  
3 ~~engineers, contractors and such other advisers, consultants and~~  
4 ~~agents as may be necessary and to fix and pay their~~  
5 ~~compensation;~~

6                   ~~Q.]~~ N. to apply for and accept gifts or grants of  
7 property, funds, services or aid in any form from the United  
8 States, any unit of government or any person and to comply,  
9 subject to the provisions of the New Mexico Finance Authority  
10 Act, with the terms and conditions of the gifts or grants;

11                   ~~[R.]~~ O. to maintain an office at any place in the  
12 state it may determine;

13                   ~~[S.]~~ P. subject to any agreement with bondholders,  
14 to:

- 15                               (1) renegotiate any loan, lease or agreement;
- 16                               (2) consent to any modification of the terms
- 17 of any loan, lease or agreement; and
- 18                               (3) purchase bonds, which may upon purchase be
- 19 canceled; and

20                   ~~[T.]~~ Q. to do any and all things necessary or  
21 convenient to carry out its purposes and exercise the powers  
22 given and granted in the New Mexico Finance Authority Act. "

23                   Section 4. Section 6-21-6 NMSA 1978 (being Laws 1992,  
24 Chapter 61, Section 6, as amended) is amended to read:

25                   "6-21-6. PUBLIC PROJECT REVOLVING FUND--PURPOSE--

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1 ADMINISTRATION. --

2 A. The "public project revolving fund" is created  
3 ~~[within the authority]~~ in the state treasury. The fund shall  
4 be administered by the authority ~~[as a separate account, but]~~  
5 and may consist of such subaccounts as the authority deems  
6 necessary to carry out the purposes of the fund. ~~[The~~  
7 ~~authority may establish procedures and adopt rules as required~~  
8 ~~to administer the fund in accordance with the New Mexico~~  
9 ~~Finance Authority Act.]~~ Money in the fund is appropriated to  
10 the authority to carry out the purposes of the New Mexico  
11 Finance Authority Act. Expenditures from the fund shall be by  
12 warrants drawn by the secretary of finance and administration  
13 pursuant to vouchers signed by the executive director of the  
14 authority or his authorized representative.

15 B. Except as otherwise provided in the New Mexico  
16 Finance Authority Act, money from payments of principal of and  
17 interest on loans and payments of principal of and interest on  
18 securities held by the authority for public projects authorized  
19 specifically by law shall be deposited in the public project  
20 revolving fund. The fund shall also consist of any other money  
21 appropriated, distributed or otherwise allocated to the fund  
22 for the purpose of financing public projects authorized  
23 specifically by law.

24 C. Money appropriated to pay administrative costs,  
25 money available for administrative costs from other sources and

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1 money from payments of interest on loans or securities held by  
2 the authority, including payments of interest on loans and  
3 securities held by the authority for public projects authorized  
4 specifically by law, that represents payments for  
5 administrative costs shall not be deposited in the public  
6 project revolving fund and shall be deposited in a separate  
7 account of the authority and may be used by the authority to  
8 meet administrative costs of the authority.

9 D. Except as otherwise provided in the New Mexico  
10 Finance Authority Act, money in the public project revolving  
11 fund is appropriated to the authority to pay the reasonably  
12 necessary costs of originating and servicing loans, grants or  
13 securities funded by the fund and to make loans or grants and  
14 to purchase or sell securities to assist qualified entities in  
15 financing public projects in accordance with the New Mexico  
16 Finance Authority Act and pursuant to specific authorization by  
17 law for each project.

18 E. Money in the public project revolving fund not  
19 needed for immediate disbursement, including money held in  
20 reserve, may be deposited with the state treasurer for  
21 short-term investment pursuant to Section 6-10-10.1 NMSA 1978  
22 or may be invested in direct and general obligations of or  
23 obligations fully and unconditionally guaranteed by the United  
24 States, obligations issued by agencies of the United States,  
25 obligations of this state or any political subdivision of the

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1 state, interest-bearing time deposits, commercial paper issued  
2 by corporations organized and operating in the United States  
3 and rated "prime" quality by a national rating service, other  
4 investments permitted by Section 6-10-10 NMSA 1978 or as  
5 otherwise provided by the trust indenture or bond resolution,  
6 if money is pledged for or secures payment of bonds issued by  
7 the authority.

8 ~~[F. The authority shall establish fiscal controls~~  
9 ~~and accounting procedures that are sufficient to assure proper~~  
10 ~~accounting for public project revolving fund payments,~~  
11 ~~disbursements and balances.~~

12 ~~G.]~~ F. Money on deposit in the public project  
13 revolving fund may be used to make interim loans for a term not  
14 exceeding two years to qualified entities for the purpose of  
15 providing interim financing for any project approved or funded  
16 by the legislature.

17 ~~H.]~~ G. Money on deposit in the public project  
18 revolving fund may be used to acquire securities or to make  
19 loans to qualified entities in connection with the equipment  
20 program. As used in this subsection, "equipment program" means  
21 the program of the authority designed to finance:

- 22 (1) the acquisition of equipment for:  
23 (a) fire protection;  
24 (b) law enforcement and protection;  
25 (c) computer and data processing;

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- 1 (d) street and road construction and
- 2 maintenance;
- 3 (e) emergency medical services;
- 4 (f) solid waste collection, transfer and
- 5 disposal;
- 6 (g) radio and telecommunications; and
- 7 (h) utility system purposes; and
- 8 (2) the acquisition, construction and
- 9 improvement of fire stations.

10 ~~[F.]~~ H. The amount of securities acquired from or  
11 the loan made to a qualified entity at any one time pursuant to  
12 Subsection ~~[H]~~ G of this section shall not exceed seven hundred  
13 fifty thousand dollars (\$750,000). The authority shall either  
14 obtain specific authorization by law for the projects funded  
15 through the equipment program at a legislative session  
16 subsequent to the acquisitions of the securities or the making  
17 of loans or issue bonds within two years of the date the  
18 securities are acquired or within two years of the date on  
19 which the loans are made and use the bond proceeds to reimburse  
20 the public project revolving fund for the amounts temporarily  
21 used to acquire securities or to make loans. The temporarily  
22 funded projects under the equipment program are not required to  
23 obtain specific authorization by law required of projects  
24 permanently funded from the public project revolving fund, as  
25 provided in this section and Section 6-21-8 NMSA 1978.

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1                   ~~[J-]~~ I. Money on deposit in the public project  
2 revolving fund may be designated as a reserve for any bonds  
3 issued by the authority, including bonds payable from sources  
4 other than the public project revolving fund, and the authority  
5 may covenant in any bond resolution or trust indenture to  
6 maintain and replenish the reserve from money deposited in the  
7 public project revolving fund after issuance of bonds by the  
8 authority.

9                   ~~[K-]~~ J. Money on deposit in the public project  
10 revolving fund may be used to purchase bonds issued by the  
11 authority, which are payable from any designated source of  
12 revenues or collateral. Purchasing and holding the bonds in  
13 the public project revolving fund shall not, as a matter of  
14 law, result in cancellation or merger of the bonds  
15 notwithstanding the fact that the authority as the issuer of  
16 the bonds is obligated to make the required debt service  
17 payments and the public project revolving fund held by the  
18 authority is entitled to receive the required debt service  
19 payments. "

20                   Section 5. Section 6-21-6.3 NMSA 1978 (being Laws 1999,  
21 Chapter 186, Section 2, as amended) is amended to read:

22                   "6-21-6.3. WATER AND WASTEWATER PROJECT GRANT FUND--  
23 CREATION-- ADMINISTRATION-- PURPOSES. --

24                   A. ~~[There is created in the authority]~~ The "water  
25 and wastewater project grant fund" ~~[which]~~ is created in the

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1 state treasury. The fund shall be administered by the  
2 authority. [~~The authority shall adopt, in accordance with the~~  
3 ~~New Mexico Finance Authority Act, rules necessary to administer~~  
4 ~~the fund.] Money in the fund is appropriated to the authority~~  
5 to carry out the purposes of the New Mexico Finance Authority  
6 Act. Expenditures from the fund shall be by warrants drawn by  
7 the secretary of finance and administration pursuant to  
8 vouchers signed by the executive director of the authority or  
9 his authorized representative.

10 B. The following shall be deposited directly into  
11 the water and wastewater project grant fund:

12 (1) the net proceeds from the sale of bonds  
13 issued pursuant to the provisions of Section 6-21-6.1 NMSA 1978  
14 for the purposes of the water and wastewater project grant fund  
15 and payable from the public project revolving fund;

16 (2) money appropriated by the legislature to  
17 implement the provisions of this section; and

18 (3) any other public or private money  
19 dedicated to the fund.

20 C. Money in the water and wastewater project grant  
21 fund is appropriated to the authority to make grants to  
22 qualified entities for water or wastewater public projects  
23 pursuant to specific authorization by law for each project and  
24 to pay administrative costs of the water and wastewater project  
25 grant program.

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1           D. The authority shall adopt rules governing the  
2 terms and conditions of grants made from the water and  
3 wastewater project grant fund. Except in the circumstances set  
4 forth in Subsection F of this section, grants may be made from  
5 the fund only with participation from the qualified entity in  
6 the form of a local match, which shall be determined by a  
7 sliding scale based on the qualified entity's financial  
8 capacity to pay a portion of the project from local resources.  
9 Grants from the water and wastewater project grant fund may be  
10 made only as all or part of financing for a complete project  
11 after the authority has determined that the financing for the  
12 complete project is cost effective.

13           E. The authority may make grants from the water and  
14 wastewater project grant fund to qualified entities for  
15 emergency public projects without specific authorization by  
16 law. Each emergency public project shall be designated as such  
17 by the authority prior to making the grant. The aggregate  
18 amount of grants for emergency public projects in fiscal years  
19 2003, 2004 and 2005 shall not exceed six million dollars  
20 (\$6,000,000) for each fiscal year. The aggregate amount of  
21 grants for emergency public projects in fiscal year 2006 and  
22 subsequent fiscal years shall not exceed three million dollars  
23 (\$3,000,000) for each fiscal year.

24           F. To encourage consolidation of water or  
25 wastewater systems and to discourage proliferation of multiple

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1 water or wastewater systems, the authority may determine the  
2 local match requirement based on the financial capacity of:

3 (1) the residents of the geographic area  
4 benefiting from the improvements to be financed with the  
5 proceeds of the grant received on their behalf by the qualified  
6 entity; or

7 (2) the qualified entity benefiting from the  
8 improvements to be financed with the proceeds of the grant when  
9 the benefiting qualified entity agrees to consolidate with the  
10 qualified entity receiving the grant. "

11 Section 6. Section 6-21-6.4 NMSA 1978 (being Laws 2002,  
12 Chapter 26, Section 2) is amended to read:

13 "6-21-6.4. WATER AND WASTEWATER PLANNING FUND--  
14 CREATION-- ADMINISTRATION-- PURPOSES. --

15 A. The "water and wastewater planning fund" is  
16 created [~~within the authority, which~~] in the state treasury.  
17 The fund shall be administered by the authority. [The  
18 authority shall adopt rules necessary to administer the  
19 fund.] Money in the fund is appropriated to the authority to  
20 carry out the purposes of the New Mexico Finance Authority  
21 Act. Expenditures from the fund shall be by warrants issued  
22 by the secretary of finance and administration on vouchers  
23 signed by the executive director of the authority or his  
24 authorized representative.

25 B. The following shall be deposited directly into

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1 the water and wastewater planning fund:

2 (1) the net proceeds from the sale of bonds  
3 issued pursuant to the provisions of Section 6-21-6.1 NMSA 1978  
4 for the purposes of the water and wastewater planning fund and  
5 payable from the public project revolving fund;

6 (2) money appropriated by the legislature to  
7 implement the provisions of this section; and

8 (3) any other public or private money  
9 dedicated to the fund.

10 C. Money in the water and wastewater planning fund  
11 is appropriated to the authority to make grants to qualified  
12 entities to evaluate and to estimate the costs of implementing  
13 the most feasible alternatives for meeting water and wastewater  
14 public project needs and to pay administrative costs of the  
15 water and wastewater planning program.

16 D. The authority shall adopt rules governing the  
17 terms and conditions of grants made from the water and  
18 wastewater planning fund. Grants may be made from the fund  
19 only with the agreement of the qualified entity to reimburse  
20 the fund for the amount of the grant when financing from any  
21 source is subsequently received by the qualified entity for the  
22 water or wastewater public project.

23 E. The authority may make grants from the water and  
24 wastewater planning fund to qualified entities without specific  
25 authorization by law for each grant. "

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1           Section 7. Section 6-21-10 NMSA 1978 (being Laws 1992,  
2 Chapter 61, Section 10, as amended) is amended to read:

3           "6-21-10. PURCHASES IN NAME OF AUTHORITY--  
4 DOCUMENTATION. --

5           A. All tangible and intangible property, real and  
6 personal property and securities purchased, held or owned at  
7 any time by the authority shall at all times be purchased and  
8 held in the name of the [~~authority, or may be mortgaged,~~  
9 ~~assigned or otherwise encumbered as security for the repayment~~  
10 ~~of bonds issued by the authority]~~ state.

11           B. All securities purchased at any time by the  
12 authority, upon delivery to the authority, shall be accompanied  
13 by all documentation required by the authority and shall  
14 include an approving opinion of recognized bond counsel,  
15 certification and guarantee of signatures and certification as  
16 to no litigation pending as of the date of delivery of the  
17 securities challenging the validity or issuance of such  
18 securities. "

19           Section 8. Section 6-21A-4 NMSA 1978 (being Laws 1997,  
20 Chapter 144, Section 4, as amended) is amended to read:

21           "6-21A-4. FUND CREATED-- ADMINISTRATION. --

22           A. [~~There is created in the authority a revolving~~  
23 ~~loan fund to be known as]~~ The "drinking water state revolving  
24 loan fund" [~~which~~] is created in the state treasury. The fund  
25 shall be administered by the authority. The authority [~~is~~

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1 ~~authorized to~~ shall establish procedures required to  
2 administer the fund in accordance with the Safe Drinking Water  
3 Act and state laws. The authority and the department shall,  
4 whenever possible, coordinate application procedures and  
5 funding cycles with the New Mexico Community Assistance Act.

6 B. The following shall be deposited directly in the  
7 fund:

8 (1) grants from the federal government or its  
9 agencies allotted to the state for capitalization of the fund;

10 (2) funds as appropriated by the legislature  
11 to implement the provisions of the Drinking Water State  
12 Revolving Loan Fund Act or to provide state matching funds that  
13 are required by the terms of any federal grant under the Safe  
14 Drinking Water Act;

15 (3) loan principal, interest and penalty  
16 payments if required by the terms of any federal grant under  
17 the Safe Drinking Water Act;

18 (4) any other public or private money  
19 dedicated to the fund; and

20 (5) revenue transferred from other state  
21 revolving funds.

22 C. Expenditures from the fund shall be by warrants  
23 drawn by the secretary of finance and administration pursuant  
24 to vouchers signed by the executive director of the authority  
25 or his authorized representative. Money in the fund is

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1 appropriated for expenditure by the authority in a manner  
2 consistent with the terms and conditions of the federal  
3 capitalization grants and the Safe Drinking Water Act and may  
4 be used:

5 (1) to provide loans for the construction or  
6 rehabilitation of drinking water facilities;

7 (2) to buy or refinance the debt obligation of  
8 a local authority at an interest rate that is less than or  
9 equal to the market interest rate in any case in which a debt  
10 obligation is incurred after July 1, 1993;

11 (3) to guarantee or purchase insurance for  
12 obligations of local authorities to improve credit market  
13 access or reduce interest rates;

14 (4) to provide loan guarantees for similar  
15 revolving funds established by local authorities; and

16 (5) to provide a source of revenue or security  
17 for the repayment of principal and interest on bonds issued by  
18 the authority if the proceeds of the bonds are deposited in the  
19 fund or if the proceeds of the bonds are used to make loans to  
20 local authorities to the extent provided in the terms of the  
21 federal grant.

22 D. If needed to cover administrative expenses,  
23 pursuant to procedures established by the authority, the  
24 authority may impose and collect a fee from each local  
25 authority that receives financial assistance from the fund,

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1 which fee shall be used solely for the costs of administering  
2 the fund and which fee shall be kept outside the fund.

3 E. Money not currently needed for the operation of  
4 the fund or otherwise dedicated may be invested pursuant to the  
5 New Mexico Finance Authority Act and all interest earned on  
6 such investments shall be credited to the fund. Money  
7 remaining in the fund at the end of the fiscal year shall not  
8 revert to the general fund but shall accrue to the credit of  
9 the fund.

10 F. The authority shall [~~maintain full authority for~~  
11 ~~the operation of~~] administer the fund in accordance with  
12 applicable federal and state law, including, in cooperation  
13 with the department, ensuring the loan recipients are on the  
14 state priority list or otherwise satisfy the Safe Drinking  
15 Water Act requirements.

16 G. The authority shall [~~establish fiscal controls~~  
17 ~~and accounting procedures that are sufficient to assure proper~~  
18 ~~accounting for fund payments, disbursements and balances and~~  
19 ~~shall~~] provide, in cooperation with the department, a biannual  
20 report and an annual independent audit on the fund to the  
21 governor and to the United States environmental protection  
22 agency as required by the Safe Drinking Water Act. "

23 Section 9. Section 6-21A-5 NMSA 1978 (being Laws 1997,  
24 Chapter 144, Section 5) is amended to read:

25 "6-21A-5. LOAN PROGRAM - ADMINISTRATION. --

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1           A. The authority shall establish a program to  
2 provide financial assistance from the fund to local  
3 authorities, individually or jointly, for acquisition,  
4 construction or modification of drinking water facilities. The  
5 authority [~~is authorized to~~] may enter into [~~memoranda of~~  
6 ~~understanding~~] joint powers agreements, contracts and other  
7 agreements to carry out the provisions of the Drinking Water  
8 State Revolving Loan Fund Act, including [~~but not limited to~~  
9 ~~memoranda of understanding~~] joint powers agreements, contracts  
10 and agreements with federal agencies, the department, local  
11 authorities and other parties.

12           B. The department shall adopt, by [~~regulation~~]  
13 rule, a system for the ranking of drinking water facility  
14 construction projects [~~requesting~~] for which financial  
15 assistance is sought and for the development of a priority list  
16 [~~which will be~~] that is part of the annual intended use plan,  
17 as required by the Safe Drinking Water Act.

18           C. The department shall adopt [~~regulations~~] rules  
19 or internal procedures addressing the mechanism for the  
20 preparation of the annual intended use plan and the content of  
21 [~~such~~] the plan and shall prepare [~~such~~] the plan, with the  
22 assistance of the authority, as required by the Safe Drinking  
23 Water Act and the capitalization grant agreement. The  
24 department shall review all proposals for drinking water  
25 facility construction projects, including [~~but not limited to~~]

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1 project plans and specifications for compliance with the  
2 requirements of the Safe Drinking Water Act and the  
3 requirements of state laws and [~~regulations~~] rules governing  
4 the construction and operation of drinking water supply  
5 facilities. The department also shall determine whether a  
6 local authority has demonstrated adequate technical and  
7 managerial capability to operate the drinking water supply  
8 facility for its useful life in compliance with the  
9 requirements of the Safe Drinking Water Act and with the  
10 requirements of state laws and [~~regulations~~] rules governing  
11 the operation of drinking water supply facilities.

12 D. The department and the authority shall enter  
13 into [~~an~~] a joint powers agreement for the purpose of  
14 describing and allocating duties and responsibilities with  
15 respect to monitoring the construction of drinking water  
16 facility construction projects that have been provided  
17 financial assistance pursuant to the provisions of the Drinking  
18 Water State Revolving Loan Fund Act to ensure compliance with  
19 the requirements of the Safe Drinking Water Act and with the  
20 requirements of state laws and [~~regulations~~] rules governing  
21 construction and operation of drinking water supply facilities.

22 E. The department shall adopt [~~regulations~~] rules  
23 or internal procedures establishing the criteria and method for  
24 the distribution of annual capitalization grant funds between  
25 the fund and the nonproject activities (set-asides) allowed by

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1 the Safe Drinking Water Act and for the description in the  
2 intended use plan and annual report of the financial  
3 programmatic status of the nonproject activities (set-asides)  
4 allowed by the Safe Drinking Water Act.

5 F. The authority, with the assistance of the  
6 department, shall establish procedures to identify  
7 affordability criteria for a disadvantaged community and to  
8 extend a program to assist such communities.

9 G. The department shall set up separate accounts  
10 outside the fund to use for nonproject activities (set-asides)  
11 [~~activities~~] authorized under the Safe Drinking Water Act,  
12 Sections 1452 (g) and 1452 (k), and the authority shall set up  
13 a separate account outside the fund for administration of the  
14 fund. The department shall also provide the additional match  
15 for Safe Drinking Water Act, Section 1452 (g) (2) activities.

16 H. The department shall prepare and submit  
17 applications for capitalization grants to the United States  
18 environmental protection agency as required by the Safe  
19 Drinking Water Act. "

20 Section 10. Section 72-4A-9 NMSA 1978 (being Laws 2001,  
21 Chapter 164, Section 9) is amended to read:

22 "72-4A-9. WATER PROJECT FUND--CREATED--PURPOSE. --

23 A. The "water project fund" is created in the [New  
24 ~~Mexico finance authority~~] state treasury and shall consist of  
25 distributions made to the fund from the water trust fund and

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1 payments of principal of and interest on loans for approved  
2 water projects. The fund shall also consist of any other money  
3 appropriated, distributed or otherwise allocated to the fund  
4 for the purpose of supporting water projects [~~pursuant to~~] in  
5 accordance with the provisions of the Water Project Finance  
6 Act. The fund shall be administered by the authority. Income  
7 from investment of the water project fund shall be credited to  
8 the fund. Balances in the fund at the end of any fiscal year  
9 shall not revert to the general fund. The water project fund  
10 may consist of such subaccounts as the authority deems  
11 necessary to carry out the purposes of the fund. The authority  
12 may establish procedures and adopt rules as required to  
13 administer the fund and to recover from the fund costs of  
14 administering the fund and originating grants and loans. Money  
15 in the fund is appropriated to the authority to carry out the  
16 purposes of the Water Project Finance Act. Expenditures from  
17 the fund shall be by warrants drawn by the secretary of finance  
18 and administration pursuant to vouchers signed by the executive  
19 director of the authority or his authorized representative.

20 B. Money in the water project fund may be used to  
21 make loans or grants to qualified entities for any project  
22 approved by the legislature.

23 C. The authority [~~is authorized to~~] may issue  
24 revenue bonds payable from the proceeds of loan repayments made  
25 into the water project fund upon a determination by the

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1 authority that issuance of the bonds is necessary to replenish  
2 the principal balance of the fund. The net proceeds from the  
3 sale of the bonds shall be deposited in the water project fund.  
4 The bonds shall be authorized and issued by the authority in  
5 accordance with the provisions of the New Mexico Finance  
6 Authority Act. "